

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE ROACH,)	No. CV 08-6805-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Stephanie Roach filed a complaint on October 21, 2008, seeking review of the Commissioner's decision denying her application for disability benefits. On May 18, 2009, the Commissioner answered the complaint, and the parties filed a joint stipulation on May 29, 2009.

BACKGROUND

I

On June 9, 2006, plaintiff applied for disability benefits under the Supplemental Security Income ("SSI") program of Title XVI of the Social Security Act ("Act"), 42 U.S.C. § 1382(a), claiming an

1 inability to work since January 1, 2003, due to depression and
2 constant pain. Certified Administrative Record ("A.R.") 8, 111. The
3 plaintiff's application was denied on December 28, 2006. A.R. 40-44.
4 The plaintiff then requested an administrative hearing, which was held
5 before Administrative Law Judge Mary L. Everstine ("the ALJ") on
6 June 10, 2008. A.R. 24-38, 47. On July 25, 2008, the ALJ issued a
7 decision finding plaintiff is not disabled. A.R. 5-13. The plaintiff
8 appealed this decision to the Appeals Council, which denied review on
9 September 8, 2008. A.R. 1-4.

10 11 II

12 The plaintiff, who was born on March 16, 1963, is currently 46
13 years old. A.R. 26. She is a high school graduate, has been trained
14 as a certified nurse's assistant and a medical assistant, and has
15 previously worked as a certified nursing assistant, waitress and
16 server. A.R. 27, 83-90, 112, 115-16, 118-27.

17
18 On November 30, 2005, plaintiff was prescribed Elavil¹ at the SEP
19 Medical Clinic. A.R. 159-60. On July 6, 2006,² Afshin Akhavan, D.O.,
20 examined plaintiff, diagnosed her with depression and insomnia, and
21 prescribed Elavil. A.R. 191. On August 4, 2006, Dr. Akhavan opined
22 plaintiff was temporarily totally disabled through August 30, 2006,
23 due to her depression and other conditions. A.R. 189. Dr. Akhavan

24
25 ¹ Elavil "is prescribed for the relief of symptoms of
26 mental depression." The PDR Family Guide to Prescription Drugs,
240 (8th ed. 2000).

27 ² Although plaintiff has both mental and physical
28 complaints, this opinion addresses only plaintiff's mental
complaints.

1 reexamined plaintiff on August 7, 2006, and prescribed Zoloft³ for
2 her. A.R. 190, 239. On October 26, 2006, Dr. Akhavan prescribed
3 Ambien⁴ for plaintiff. A.R. 238.

4
5 On November 18, 2006, Jason H. Yang, M.D., a psychiatrist,
6 examined plaintiff, diagnosed her with an unspecified depressive
7 disorder, and determined plaintiff's Global Assessment of Functioning
8 ("GAF") was 66.⁵ A.R. 193-96. Dr. Yang found there was no evidence
9 of cognitive defects, perceptual disturbances or delusional disorders
10 on mental status examination, A.R. 196, and he opined:

11
12 [Plaintiff] is able to focus attention adequately. She is
13 able to follow one and two part instructions. [She] can
14 adequately remember and complete simple and complex tasks.
15 She is able to tolerate the stress inherent in the work
16 environment, maintain regular attendances, and work without
17 supervision. In addition, she was able to interact
18 appropriately with myself and staff, and I imagine that she
19 would be able to interact appropriately with supervisors,

20
21 ³ Zoloft "is prescribed for major depression – a
22 persistently low mood that interferes with everyday living." The
PDR Family Guide to Prescription Drugs at 763.

23 ⁴ "Ambien is used for short-term treatment of insomnia.
24 . . ." The PDR Family Guide to Prescription Drugs at 30.

25 ⁵ A GAF of 66 indicates "[s]ome mild symptoms (e.g.,
26 depressed mood and mild insomnia) or some difficulty in social,
27 occupational, or school functioning (e.g., occasional truancy, or
28 theft within the household), but generally functioning pretty
well, has some meaningful interpersonal relationships." American
Psychiatric Association, Diagnostic and Statistical Manual of
Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 coworkers, and the public in the workplace.

2
3 Id.

4
5 On June 5, 2007, plaintiff was examined at the Los Angeles County
6 Department of Mental Health's Kedren Community Mental Health Center
7 ("DMH"),⁶ diagnosed as having a major depressive disorder with
8 psychotic features, and her GAF was determined to be 47.⁷ A.R. 224-
9 28. Upon mental status examination, it was found plaintiff's remote
10 memory was impaired; she was dysphoric, anxious, isolated and
11 withdrawn; had a sad affect and excessive crying; she had paranoid
12 delusions and visual hallucinations; and her judgment was moderately
13 impaired, her insight was minimally impaired, and she exhibited
14 antisocial behavior. A.R. 227. The plaintiff received mental health
15 treatment at this facility, including individual therapy and
16 psychiatric medication, until September 14, 2007. A.R. 229, 240-46.

17
18 **DISCUSSION**

19 **III**

20 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
21

22 ⁶ Plaintiff was initially seen on June 5, 2007, by Tamineca
23 Lollis, a social worker, A.R. 224-28, and on June 12, 2007, Ms.
24 Lollis's evaluation was co-signed by another person, presumably a
clinician, but the signature is illegible. A.R. 228.

25 ⁷ A GAF of 47 means "[s]erious symptoms (e.g., suicidal
26 ideation, severe obsessional rituals, frequent shoplifting) or
27 any serious impairment in social, occupational, or school
functioning (e.g. no friends, unable to keep a job)." American
28 Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental
Disorders, 34 (4th ed. (Text Revision) 2000).

1 review the Commissioner's decision denying plaintiff disability
2 benefits to determine if his findings are supported by substantial
3 evidence and whether the Commissioner used the proper legal standards
4 in reaching his decision. Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th
5 Cir. 2009); Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009).

6
7 The claimant is "disabled" for the purpose of receiving benefits
8 under the Act if she is unable to engage in any substantial gainful
9 activity due to an impairment which has lasted, or is expected to
10 last, for a continuous period of at least twelve months. 42 U.S.C.
11 § 1382c(a)(3)(A); 20 C.F.R. § 416.905(a). "The claimant bears the
12 burden of establishing a prima facie case of disability." Roberts v.
13 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
14 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

15
16 The Commissioner has promulgated regulations establishing a five-
17 step sequential evaluation process for the ALJ to follow in a
18 disability case. 20 C.F.R. § 416.920. In the **First Step**, the ALJ
19 must determine whether the claimant is currently engaged in
20 substantial gainful activity. 20 C.F.R. § 416.920(b). If not, in the
21 **Second Step**, the ALJ must determine whether the claimant has a severe
22 impairment or combination of impairments significantly limiting her
23 from performing basic work activities. 20 C.F.R. § 416.920(c). If
24 so, in the **Third Step**, the ALJ must determine whether the claimant has
25 an impairment or combination of impairments that meets or equals the
26 requirements of the Listing of Impairments ("Listing"), 20 C.F.R.
27 § 404, Subpart P, App. 1. 20 C.F.R. § 416.920(d). If not, in the
28 **Fourth Step**, the ALJ must determine whether the claimant has

1 sufficient residual functional capacity despite the impairment or
2 various limitations to perform her past work. 20 C.F.R. § 416.920(f).
3 If not, in **Step Five**, the burden shifts to the Commissioner to show
4 the claimant can perform other work that exists in significant numbers
5 in the national economy. 20 C.F.R. § 416.920(g).

6
7 Moreover, where there is evidence of a mental impairment that may
8 prevent a claimant from working, the Commissioner has supplemented the
9 five-step sequential evaluation process with additional regulations
10 addressing mental impairments. Maier v. Comm'r of the Soc. Sec.
11 Admin., 154 F.3d 913, 914 (9th Cir. 1998) (per curiam). First, the
12 ALJ must determine the presence or absence of certain medical findings
13 relevant to the ability to work. 20 C.F.R. § 416.920a(b)(1). Second,
14 when the claimant establishes these medical findings, the ALJ must
15 rate the degree of functional loss resulting from the impairment by
16 considering four areas of function: (a) activities of daily living;
17 (b) social functioning; (c) concentration, persistence, or pace; and
18 (d) episodes of decompensation. 20 C.F.R. § 416.920a(c)(2-4). Third,
19 after rating the degree of loss, the ALJ must determine whether the
20 claimant has a severe mental impairment. 20 C.F.R. § 416.920a(d).
21 Fourth, when a mental impairment is found to be severe, the ALJ must
22 determine if it meets or equals a Listing. 20 C.F.R. §
23 416.920a(d)(2). Finally, if a Listing is not met, the ALJ must then
24 perform a residual functional capacity assessment, and the ALJ's
25 decision "must incorporate the pertinent findings and conclusions"
26 regarding plaintiff's mental impairment, including "a specific finding
27 as to the degree of limitation in each of the functional areas
28 described in [§ 416.920a(c)(3)]." 20 C.F.R. § 416.920a(d)(3), (e)(2).

1 Applying the five-step sequential evaluation process, the ALJ
2 found plaintiff has not engaged in substantial gainful activity since
3 the application date, June 9, 2006. (Step One). The ALJ then found
4 plaintiff does not have a severe impairment or combination of
5 impairments; therefore, she is not disabled. (Step Two).

6
7 **IV**

8 The Step Two inquiry is "a de minimis screening device to dispose
9 of groundless claims." Smolen, 80 F.3d at 1290; Webb v. Barnhart,
10 433 F.3d 683, 687 (9th Cir. 2005). Including a severity requirement
11 at Step Two of the sequential evaluation process "increases the
12 efficiency and reliability of the evaluation process by identifying at
13 an early stage those claimants whose medical impairments are so slight
14 that it is unlikely they would be found to be disabled even if their
15 age, education, and experience were taken into account." Bowen v.
16 Yuckert, 482 U.S. 137, 153, 107 S. Ct. 2287, 2297, 96 L. Ed. 2d 119
17 (1987). However, an overly stringent application of the severity
18 requirement violates the Social Security Act by denying benefits to
19 claimants who do meet the statutory definition of disabled. Corrao v.
20 Shalala, 20 F.3d 943, 949 (9th Cir. 1994).

21
22 A severe impairment or combination of impairments within the
23 meaning of Step Two exists when there is more than a minimal effect on
24 an individual's ability to do basic work activities. Webb, 433 F.3d
25 at 686; Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001); see
26 also 20 C.F.R. § 416.921(a) ("An impairment or combination of
27 impairments is not severe if it does not significantly limit [a
28 person's] physical or mental ability to do basic work activities.").

1 Basic work activities are "the abilities and aptitudes necessary to do
2 most jobs," including physical functions such as walking, standing,
3 sitting, lifting, pushing, pulling, reaching, carrying or handling, as
4 well as the capacity for seeing, hearing and speaking, understanding,
5 carrying out, and remembering simple instructions, use of judgment,
6 responding appropriately to supervision, co-workers and usual work
7 situations, and dealing with changes in a routine work setting.

8 20 C.F.R. § 416.921(b); Webb, 433 F.3d at 686. If the claimant meets
9 her burden of demonstrating she suffers from an impairment affecting
10 her ability to perform basic work activities, "the ALJ *must* find that
11 the impairment is 'severe' and move to the next step in the SSA's
12 five-step process." Edlund v. Massanari, 253 F.3d 1152, 1160 (9th
13 Cir. 2001) (emphasis in original); Webb, 433 F.3d at 686.

14
15 Plaintiff contends the ALJ failed to properly consider the DMH
16 medical records in making the Step Two determination that she does not
17 have a severe mental impairment. The plaintiff is correct.

18
19 The medical opinions of treating physicians are entitled to
20 special weight because the treating physician "is employed to cure and
21 has a greater opportunity to know and observe the patient as an
22 individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987);
23 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.
24 1999). Therefore, the ALJ must provide clear and convincing reasons
25 for rejecting the uncontroverted opinion of a treating physician, Ryan
26 v. Comm'r of the Soc. Sec. Admin., 528 F.3d 1194, 1198 (9th Cir.
27 2008); Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998), and
28 "[e]ven if [a] treating doctor's opinion is contradicted by another

1 doctor, the ALJ may not reject this opinion without providing
 2 'specific and legitimate reasons' supported by substantial evidence in
 3 the record." Reddick, 157 F.3d at 725; Tommasetti v. Astrue,
 4 533 F.3d 1035, 1041 (9th Cir. 2008).

5
 6 Here, the ALJ discounted plaintiff's mental health records,⁸
 7 concluding "the record documents mental health treatment for only a
 8 few months." A.R. 10, 12. However, this is not accurate. Although
 9 plaintiff appears to have been treated at DMH for only four months or
 10 so between June and September 2007, she was prescribed Elavil as early
 11 as November 30, 2005, A.R. 160, and again in July 2006, when her
 12 treating physician, Dr. Akhavan, prescribed both Elavil and Zoloft for
 13 plaintiff. A.R. 189-92, 230-39. Further, the ALJ failed to address
 14 DMH's June 5, 2007 determination that plaintiff's GAF was 47. As
 15 previously noted, a GAF score of 47 indicates "[s]erious symptoms" or
 16 "any serious impairment in social, occupational, or school
 17 functioning. . . ." Although an ALJ need not discuss a GAF score in
 18 all instances, Howard v. Comm'r of Soc. Sec., 276 F.3d 235, 241 (6th
 19 Cir. 2002), the ALJ must do so when, as here, he has not provided any

20
 21 ⁸ For purpose of this opinion only, the Court considers all
 22 the DMH records to constitute medical records from a treating
 23 source. See, e.g., Benton v. Barnhart, 331 F.3d 1030, 1035-40
 24 (9th Cir. 2003). Since the supervisor's signature on the initial
 25 DMH assessment is illegible, A.R. 228, it is unclear if that
 26 person is a psychiatrist or a psychologist, and this needs
 27 clarification on remand in order to determine what weight to give
 28 the DMH records. See Benton, 331 F.3d at 1039 ("If the ALJ was
 not sure as to Dr. Zwiefach's background, he had the opportunity
 and duty to develop the record."); Tonapetyan v. Halter,
 242 F.3d 1144, 1150 (9th Cir. 2001) ("Ambiguous evidence, or the
 ALJ's own finding that the record is inadequate to allow for
 proper evaluation of the evidence, triggers the ALJ's duty to
 'conduct an appropriate inquiry.'" (citations omitted)).

1 rationale for otherwise rejecting a treating physician's opinion of a
2 claimant's overall mental functioning, and such opinion - as expressed
3 in a GAF score - clearly contradicts the ALJ's finding regarding the
4 claimant's mental functioning. See, e.g., McCloud v. Barnhart,
5 166 Fed. Appx. 410, 418 (11th Cir. 2006) (per curiam) (Unpublished)
6 ("We are unable to determine from the record what weight the ALJ
7 placed on the GAF score of 45; therefore, we reject the Commissioner's
8 argument that any error was harmless. With the knowledge that a GAF
9 score of 45 reflects severe impairments, the ALJ should determine
10 what, if any, weight to place on the score."); Lee v. Barnhart,
11 117 Fed. Appx. 674, 678 (10th Cir. 2004) (Unpublished) ("A GAF score
12 of 50 or less . . . does suggest an inability to keep a job. In a
13 case like this one, decided at step two, the GAF score should not have
14 been ignored." (citation omitted)); Bennett v. Barnhart,
15 264 F. Supp. 2d 238, 255 (W.D. Pa. 2003) (Contrary to ALJ's Step Two
16 determination, "a GAF score of 55 to 60 suggests . . . a mental
17 impairment that is 'severe' in nature."); Rodriguez v. Astrue,
18 2009 WL 1586529, *2 (C.D. Cal.) ("[T]he ALJ erred in his Step Two
19 determination by failing to properly consider the treating clinician's
20 . . . opinion that [the claimant] suffered from a severe mental
21 impairment, as evidenced by the clinician's rating of [the claimant's
22 GAF] at 50.").

23
24 For these reasons, the ALJ's Step Two determinations that
25 plaintiff does not have a severe mental impairment, and is not
26 disabled, are not supported by substantial evidence.

27 //

28 //

V

When the ALJ's decision is not supported by substantial evidence, the Court has the authority to affirm, modify, or reverse the decision "with or without remanding the cause for rehearing." 42 U.S.C. § 405(g); McCartey v. Massanari, 298 F.3d 1072, 1076 (9th Cir. 2002). Generally, "the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation." Benecke v. Barnhart, 379 F.3d 587, 593 (9th Cir. 2004); Moisa v. Barnhart, 367 F.3d 882, 886 (9th Cir. 2004). Here, remand is appropriate so the ALJ can properly assess the medical evidence and determine whether plaintiff has a severe mental impairment and is disabled.⁹ Webb, 433 F.3d at 688; Edlund, 253 F.3d at 1160.

ORDER

IT IS ORDERED that: (1) plaintiff's request for relief is granted; and (2) the Commissioner's decision is reversed, and the action is remanded to the Social Security Administration for further proceedings consistent with this Opinion and Order, pursuant to sentence four of 42 U.S.C. § 405(g), and Judgment shall be entered accordingly.

DATE: August 5, 2009

/S/ ROSALYN M. CHAPMAN
 ROSALYN M. CHAPMAN
 UNITED STATES MAGISTRATE JUDGE

⁹ Having reached this conclusion, it is unnecessary to reach the other arguments plaintiff raises, none of which will provide plaintiff any further relief than herein granted.